IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1836 OF 2005

Shri Nagappa Maruti Bhurgude & Ors. : Petitioners
(Orig.Defendants)

V/s.

Shri Kedari Ramchandra Bhurgude : Respondent
(Orig. Plaintiff)

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Mrs.Prabhu for Mr.N.V.Bandiwadekar for the petitioners.

Mr.D.B.Patil for the respondent.

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CORAM : S.A. BOBDE, J.

July 8, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Patil, learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. The petitioner has challenged the order of the trial Court refusing to appoint a Commissioner on the ground that the Court has already found that the plaintiff is in possession. This, in my view, is a good enough reason for refusing to appoint a Commissioner. The learned counsel

for the respondent has tendered a certified copy of the order dated 13.4.2004 refusing to appoint a Commissioner in the same suit for the same purpose. The said certified copy of the said order is taken on record and marked 'X' for identification. In this view of the matter, the decision relied upon by the learned counsel for the petitioners in Payani Achuthan v. Chamballikundu Harijan Fisheries Development Co-operative Society (A.I.R. 1996 Kerala 276) has no application.

3. The petition is dismissed with costs. The rule stands discharged.

S.A. BOBDE, J.